Nik Rahimi bt Wan Hassan & Anor v Nik Rahmat bin Wan Hassan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-431-02 OF 2012
MOHD HISHAMUDIN, AZIAH ALI, MOHTARUDIN BAKI, JJCA
9 JANUARY 2015

Trusts and Trustees — Trusts — Validity — Void trust — Respondent claimed for property in capacities as trustee and attorney in High Court — Claim challenged by appellants — Whether instruments used to create trust and power attorney valid — How property should be distributed — Whether by way of faraid

The respondent had made a claim in the High Court based on the allegation that his late mother ('Nik Zainab') had appointed him as the trustee and attorney for her granddaughter (the respondent's daughter) for a trust over a bungalow house. The appellants argued that the documents creating the trust and power of attorney ('POA'), exhs P1 and P2, were invalid because the contents were confusing and conflicting. According to the appellants, after the execution of exhs P1 and P2, Nik Zainab had directed a solicitor to prepare an irrevocable POA, appointing the third defendant to deal with the property and to nullify exhs P1 and P2. The respondent contended that, in the light of the state of health of Nik Zainab at the material time, exh D28 could not have been voluntarily made by the latter. The defendant counterclaimed that exh D28 given to the first appellant overrode exhs P1 and P2; and submitted that the property should be distributed by way of *faraid*. The High Court allowed the respondent's claim and dismissed the defendant's counterclaim. Hence, the present appeal.

Held, allowing the appeal in part; setting aside the order of High Court:

(1) The respondent had no locus standi to bring the action on behalf of Nik Afrina. If at all, exh P1 created a POA, the donor was Nik Zainab while the donee was the respondent, meaning that the respondent was an attorney for Nik Zainab and not the attorney for Nik Afrina. The trustee for Nik Afrina was Nik Zainab. The POA in exh P1 ceased to be in force upon the death of Nik Zainab (see para 25).

(2) Like exh P1, exh P2 was not just a trust instrument but was also the POA of the property. Just like exh P1, the donor of the POA was still Nik Zainab and the donee was the respondent. Exhibit P2 makes an express

reference to exh P1, making it clear that exh P1 shall prevail over exh P2 should there be any contradiction between these two instruments (see paras 28–29).

(3) If exh P2 was a trust instrument appointing the respondent as a trustee for the benefit of Nik Afrina in respect of the property, then exh P2 contradicted exh P1 since under exh P1, Nik Zainab, and not the respondent, was the trustee for Nik Afrina. Since it was provided in exh P2 that in the event that exh P2 contradicted exh P1, exh P1 would prevail, exh P2 did not make the respondent the trustee for Nik Afrina. Exhibit P2 did not confer any locus standi on the respondent to bring this action as 'trustee' or 'attorney' of Nik Afrina (see paras 30–31).

[Bahasa Malaysia summary

Responden telah membuat tuntutan di Mahkamah Tinggi berdasarkan tuduhan bahawa arwah ibunya ('Nik Zainab') telah melantiknya sebagai pemegang amanah dan peguam untuk cucu perempuannya (anak responden) untuk amanah ke atas rumah banglo. Perayu-perayu berhujah bahawa dokumen-dokumen yang membentuk amanah dan surat wakil kuasa ('SWK'), eksh P1 dan P2, adalah tak sah kerana kandungan adalah mengelirukan dan bercanggah. Mengikut perayu-perayu, selepas pelaksanaan ekshs P1 dan P2, Nik Zainab telah mengarahkan pengarah untuk menyediakan SWK tak boleh dibatalkan, dengan melantik defendan ketiga untuk berurusan dengan hartanah dan untuk membatalkan ekshs P1 dan P2. Responden berhujah bahawa, berdasarkan keadaan kesihatan Nik Zainab pada masa material, eksh D28 tidak boleh dibuat secara sukarela oleh Nik Zainab. Defendan menuntut balas bahawa eksh D28 yang diberi kepada perayu pertama menolak eksh P1 dan P2; dan berhujah bahawa hartanah patut dibahagikan melalui faraid. Mahkamah Tinggi membenarkan tuntutan responden dan menolak tuntutan balas defendan. Maka rayuan ini.

Diputuskan, membenarkan sebahagian rayuan; mengetepikan perintah Mahkamah Tinggi:

(1) Responden tidak mempunyai lokus standi untuk membawa tindakan bagi pihak Nik Afrina. Jika sekiranya eksh P1 membentuk SWK, penderma adalah Nik Zainab sementara penerima derma adalah responden, bermaksud bahawa responden adalah peguam untuk Nik Zainab dan bukan peguam untuk Nik Afrina. Pemegang amanah untuk Nik Afrina adalah Nik Zainab. SWK dalam eksh P1 berhenti daripada berkuat kuasa dengan kematian Nik Zainab (lihat perenggan 25).

(2) Seperti eksh P1, eksh P2 bukan sahaja instrumen amanah tetapi juga adalah SWK hartanah tersebut. Seperti juga eksh P1, penderma SWK adalah masih Nik Zainab dan penerima derma adalah responden. Ekshibit P2 membuat rujukan nyata kepada eksh P1, membuatkan ia

jelas bahawa eksh P1 akan mengatasi eksh P2 sekiranya terdapat apa-apa penyangkalan antara kedua-dua instrumen (lihat perenggan 28–29).

(3) Jika eksh P2 adalah instrumen amanah yang melantik responden sebagai pemegang amanah bagi kepentingan Nik Afrina berkaitan hartanah tersebut, maka eksh P2 bertentangan eksh P1, memandangkan di bawah P1, Nik Zainab, dan bukan responden, adalah pemegang amanah untuk Nik Afrina. Memandangkan ia diperuntukan di dalam eksh P2 bahawa jika eksh P2 bertentangan eksh P1, eksh P1 akan mengatasi eksh P2, eksh P2 tidak melantik responden sebagai pemegang amanah untuk Nik Afrina. Eksh P2 tidak memberikan apa-apa lokus standi ke atas responden untuk membawa tindakan ini sebagai 'trustee' atau 'attorney' Nik Afrina (lihat perenggan 30–31).]

Notes

For cases on validity, see 12(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3165–3167.

Cases referred to

Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor [1976] 2 MLJ 177 (refd)

Tang Meng Hock v Tang Ming Seng [2010] 1 MLJ 33; [2010] 1 CLJ 208, CA (refd)

Legislation referred to

Contracts Act 1950 ss 26, 26(a)

Powers of Attorney Act 1949 ss 5, 6(a)

Veronica Steven (Veronica & Co) for the appellants.

Wan Rohimi Wan Daud (Mohd Faizi Che Abu with him) (Wan Rohimi & Asmadi) for the respondent.

Mohd Hishamudin JCA (delivering judgment of the court):

[1] This appeal is against the decision of the High Court of Kuala Lumpur (Civil Division) dated 25 January 2012.

[2] At the High Court the respondent's claim was allowed, and the appellants' counterclaim was dismissed.

[3] The appellants were two of the four defendants at the High Court, whilst the respondent was the plaintiff.

[4] On 11 February 2014 we have unanimously allowed the appeal in part.

[5] We now give our grounds.

[6] The High Court had allowed the respondent's (plaintiff's) prayers for, among others, a declaration that two instruments creating a trust called:

(1) *Deklarasi Amanah Dan Surat Kuasa Wakil* dated 23 June 2006 (exh P1); and

(2) *Trust Declaration & Power of Attorney* dated 27 June 2006 (exh P2),

in respect of an immovable property situated in Kuala Lumpur, namely, a double storey bungalow house in Bukit Pantai, registered in the name of one Nik Zainab bt Hj Nik Majid, are valid as trust instruments and powers of attorney; that these trust instruments appoint the plaintiff the trustee and attorney for the beneficiary; and that the beneficiary under the trust is one Nik Afrina bt Nik Rahmat.

[7] The present appeal concerns a dispute between siblings over a piece of property — a bungalow house at Bukit Pantai, in Kuala Lumpur ('the disputed property'). A half-share in this disputed property belonged to the late Nik Zainab bt Hj Nik Majid — the mother of the parties (that is to say, the mother of the appellants/defendants and the respondent/plaintiff). What is in dispute is this half share of the late Nik Zainab (The other half-share in the property belonged to one Ruhinda bt Hj Mohamed — but for the purpose of this appeal, we are not concerned with this other half-share.).

THE PLAINTIFF'S CASE

[8] It is the contention of the plaintiff, Nik Rahmat, that his late mother, Nik Zainab (who was also the mother of all the other siblings, the defendants), whilst alive, had created a trust over the disputed property in favour of her granddaughter, Nik Afrina (the daughter of the plaintiff), who was three years of age then; and that, by that trust instruments, had appointed the plaintiff, the father of Nik Afrina, the trustee as well as the attorney for Nik Afrina. The plaintiff claims that the trust and power of attorney were created through the execution of two instruments by his late mother, Nik Zainab, during her lifetime, namely, exh P1 and exh P2.

[9] At the time when the alleged trust instruments (exh P1 and exh P2) were executed the late Nik Zainab lived with the plaintiff, the plaintiff's wife, their daughter, Nik Afrina, and the fourth defendant, Nik Rashidah bt Wan Hassan, in the disputed property at Bukit Pantai, Kuala Lumpur.

Exhibit P2 states:

TRUST DECLARATION & POWER OF ATTORNEY

Dated This 27 Day of June 2006

BETWEEN

NIK ZAINAB BINTI NIK MAJID

THE DONOR/GRANTOR

AND

NIK RAHMAT BIN WAN HASSAN

THE DONEE/TRUSTEE

IN FAVOUR OF

NIK AFRINA BINTI NIK RAHMAT

THE BENEFICIARY

POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS

that I, NIK ZAINAB BINTI NIK MAJID (NRIC NO: 291231-03-5490*/2637551) of No. 9, Jalan Turi, Bukit Pantai, 59100 Kuala Lumpur, Wilayah Persekutuan in my personal capacity and as the registered owner of ½ share (½ Bahagian) of the properties known as GRN 7767, Lot No. 40554, Mukim Kuala Lumpur bearing a postal address similar to my residential address as stated above do hereby nominate and appoint my son;

NIK RAHMAT BIN WAN HASSAN (NRIC NO: 580903-03-5037/5504582) also of No. 9, Jalan Turi, Bukit Pantai, 59100 Kuala Lumpur, Wilayah Persekutuan;

To be my ATTORNEY for and in my name otherwise to do all or any of the following things and acts within Malaysia as a Trustee in respect of my ½ share of the property known as GRN 7767, Lot No. 40554, Mukim Kuala Lumpur (hereinafter called the said 'Property') held ON Trust on behalf of my beneficiary Granddaughter NIK AFRINA BINTI NIK RAHMAT (BIRTH CERTIFCATE NO: BF 44307/NRIC NO: 031104-03-1154) until she attains the age of majority.

This Power of Attorney is given in favour of my above named son to protect my above named Granddaughter's interest and rights in the ½ share of the said property until such time she attains the age of majority whereby my ½ share in the said property shall be transferred to her by my Attorney. This Power of Attorney shall be read and construed in accordance with and subject to the Syariah Court Trust Declaration and Power of Attorney named 'DEKLARASI AMANAH DAN SURAT KUASA WAKIL' which is executed simultaneously for the purpose of the gift of the said property to my Granddaughter.

In the event of a contradiction between both the aforesaid instruments the said 'DEKLARASI AMANAH DAN SURAT KUASA WAKIL' shall prevail and any such contradiction shall be given a sensible and reasonable construction in favour of my Beneficiary Granddaughter's interest.

1. To demand, sue for, defend in court ... Nik

Nik Zainab died on 22 June 2007.

THE DEFENDANTS' CASE

[10] The defendants contend that neither exh P1 nor exh P2 is valid on two grounds, namely:

(a) that the two documents are flawed and defective; and

(b) that the two instruments were fraudulently obtained.

[11] We begin by inquiring into the issue as to whether exh P1 and exh P2 are flawed and defective.

[12] It is the defendants' contention that exh P1 and exh P2 are flawed and defective by reason of the fact that their contents are conflicting and confusing.

The findings of this court with respect to the plaintiff's claim

[13] With respect, we accept the defendants' submission that exh P1 and exh P2 are flawed and defective. We have closely examined the contents of exh P1 and exh P2 and we find that the contents are indeed confusing, and we are uncertain as to the intention of the late Nik Zainab. What is it that she wanted to create by these two instruments: a trust or a power of attorney? Or both? If what is intended is to create a trust, who is supposed to be the trustee? The late Nik Zainab or the plaintiff? We find that exh P1 and exh P2 contradict each other thereby making it uncertain as to the intention of the late Nik Zainab. Thus these two instruments are void by reason of uncertainty as to their intention.

[14] However, assuming that exh P1 and exh P2 are valid, we proceed to make the following observations and conclusions.

[15] In exh P1, in para 1, the late Nik Zainab appears to have created a trust in respect of the disputed property and appointed herself to be the trustee for the benefit of her granddaughter, Nik Afrina.

[16] At the same time, however, in para 2 of exh P1, she appointed the plaintiff as her attorney under an irrevocable power of attorney, the consideration being for natural love and affection. Under the power of attorney, the plaintiff is given the power:

> ... untuk melaksanakan semua dokumen dan untuk membuat perkara-perkara yang perlu bagi menyebabkan Hartanah tersebut dipindah milik kepada dan didaftarkan

A di atas nama Benefisiari atau menyebabkan Hartanah tersebut diuruskan mengikut kehendak atau arahan Benefisiari ...

[17] It is pertinent to note that if at all exh P1 created a trust, the trustee is Nik Zainab herself, and not the plaintiff.

B

And if at all exh P1 created a power of attorney, the donor is Nik Zainab, and the donee, the plaintiff; meaning that the plaintiff is an attorney for Nik Zainab and not an attorney of his infant daughter, Nik Afrina.

C

[18] It is important for us to highlight these facts because in the present suit the plaintiff, based on the title of the action, is bringing the action in the following capacity:

D (sebagai pemegang amanah dan wakil kuasa untuk dan bagi pihak Nik Afrina Binti Nik Rahmat)

[19] Based on the title of the action, the plaintiff is bringing the action in two capacities:

E

(a) as the trustee for Nik Afrina; and

(b) as the attorney of Nik Afrina.

[20] One thing is clear though: the plaintiff is not bringing the action as the F attorney or in the name of the late Nik Zainab; nor is the plaintiff bringing this action in his capacity as the next friend of the minor, Nik Afrina.

[21] Now, based on exh P1, the plaintiff is neither the trustee for, nor the G attorney of, Nik Afrina. The trustee for Nik Afrina is her grandmother, the late Nik Zainab; and the plaintiff is not the attorney of Nik Afrina: he is the attorney of the late Nik Zainab.

[22] That this is the legal position as far as exh P1 is concerned, appears to be H conceded by the plaintiff in para 14 of the statement of claim. This paragraph states:

14. Melalui Dokumen Pertama [Exh. P1] tersebut Ibu tersebut telah inter alia:

(a) mengistiharkan dirinya sebagai Pemegang Amanah dan bahawa dia I memegang 1A Bahagian Hartanah tersebut kepunyaannya bagi pihak Anak Plaintif tersebut juga dinyatakan sebagai seorang benefisiari;

(b) mengistiharkan bahawa di atas balasan kasih sayang (in consideration of natural love and affection) Surat Kuasa Wakil ini tidak boleh dibatalkan (irrevocable); dan

(c) melantik Plaintif sebagai wakil kuasa (attorney) untuk:

(i) melaksanakan semua dokumen-dokumen dan membuat apa yang perlu memindah milik ½ Bahagian Hartanah tersebut kepunyaannya dan didaftarkan di atas nama Anak Plaintif tersebut; atau

(ii) menyebabkan ½ Bahagian Hartanah tersebut kepunyaannya diuruskan mengikut kehendak atau arahan Anak Plaintif tersebut.

[23] We wish to pause and state here that we accept the contention of the defendants that with the death of Nik Zainab on 22 June 2007 the power of attorney in exh P1 ceased to be in force (see s 5 of the Powers of Attorney Act 1949). However, it is contended by learned counsel for the plaintiff that the power of attorney continued to be in force notwithstanding the death of Nik Zainab by reason of s 6(a) of the Powers of Attorney Act 1949 since the power of attorney was given for valuable consideration, and that natural love and affection do, in law, constitute valuable consideration, citing *Tang Meng Hock v Tang Ming Seng* [2010] 1 MLJ 33; [2010] 1 CLJ 208 where, at para [20] of the judgment of the Court of Appeal, Low Hop Bing JCA said:

> [20] It is an established principle that natural love and affection is good and valid consideration in law. This is all too well-known in land and conveyancing law and practice.

[24] With respect, the above *dicta* is *per in curium*. In our judgment it is clear from s 26(a) of the Contracts Act 1950 that 'natural love and affection' does not constitute consideration. Let us examine s 26(a). It provides:

> 26. Agreement made without consideration, void, unless:
>
> An agreement made without consideration is void, unless —
>
> (a) it is expressed in writing and registered under the law (if any) for the time being in force for the registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other;

[25] The general rule under our law of contract as provided for by s 26 is that an agreement made without consideration is void. But para (a) of the above s 26 provides one of the exceptions to the general rule in a situation where the agreement is made on account of natural love and affection between parties standing in a near relation to each other. Thus para (a) above provides for an exception in a case of natural love and affection; it does not say that natural love and affection constitute consideration. Hashim Yeop Sani J (as he then was) understood that paragraph to be an exception to the general rule when he said in *Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor* [1976] 2 MLJ 177 (at p 181):

> An agreement without consideration is void unless it comes under one of the exceptions in s 26 of our Contracts Act 1950. (Emphasis added.)

Thus, based on exh P1 alone the plaintiff has no locus standi to bring the action on behalf of Nik Afrina.

[26] We now move on to exh P2. Earlier in this judgment we have set out the essential provisions of exh P2. According to the plaintiff in his statement of claim (see para 15 of the statement of claim), unlike exh P1, exh P2 creates a trust in relation to the disputed property for the benefit of Nik Afrina, appointing the plaintiff as trustee of the trust. And, apart from that, exh P2 also creates an irrevocable power of attorney (for valuable consideration) appointing the plaintiff as the attorney of the late Nik Zainab.

[27] Paragraph 15 of the statement of claim states:

> 15. Melalui Dokumen Ke-2 [Exh. P2] tersebut Ibu tersebut telah menguatkan dan menjelaskan dengan lebih lanjut dan terperinci kuasa-kuasa yang terkandung di dalam Dokumen Pertama [Exh. P1] tersebut dan melantik Plaintif sebagai Pemegang Amanah (Trustee). Dokumen Ke-2 [Exh. P2] tersebut hendaklah dibaca bersama dengan Dokumen Pertama [Exh. P1]tersebut demi menjaga kepentingan Anak Plaintif tersebut yang masih belum cukup umur di dalam 1/2 Bahagian Hartanah tersebut.

[28] We find that this document (exh P2) creates a trust appointing the plaintiff as the trustee in respect of the disputed property and Nik Afrina as the beneficiary. Like exh P1, exh P2 is not just a trust instrument but is also a power of attorney in respect of the disputed property. Just like exh P1, the donor of the power of attorney is still the late Nik Zainab, and the donee is the plaintiff. But, unlike exh P1, the provisions of the power of attorney in exh P2 appear to be extensive. For example, cl 10 of exh P2 allows the plaintiff to sell the disputed property (there is no such power in exh P1); and exh P2 gives power to the plaintiff to manage all the deceased properties including but not limited to institute and defend actions and to recover properties. There is no such power in exh P1; and exh P1 is confined only to the disputed property and does not concern the other properties of the late Nik Zainab.

[29] It is significant to note that exh P2 makes an express reference to exh P1 making it clear that exh P1 shall prevail over exh P2 should there be any contradiction between these two instruments. It is to be recalled that exh P2 states:

> In the event of a contradiction between both the aforesaid instruments the said 'DEKLARASI AMANAH DAN SURAT KUASA WAKIL' shall prevail and any

such contradiction shall be given a sensible and reasonable construction in favour of my Beneficiary Granddaughter's interest.

[30] If exh P2 is a trust instrument appointing the plaintiff as a trustee for the benefit of Nik Afrina in respect of the disputed property, then, exh P2 contradicts exh P1; since under exh P1 the late Nik Zainab is the trustee for Nik Afrina and not the plaintiff. And since it is provided in exh P2 that in the event that exh P2 contradicts exh P1 the latter (that is, exh P1) prevails, therefore, the provision of exh P1 appointing the late Nik Zainab as the trustee of the trust for Nik Afrina prevails, meaning that exh P2 does not make Nik Rahmat, the plaintiff, the trustee for Nik Afrina. At best exh P2 is merely an irrevocable power of attorney appointing the plaintiff as the attorney for the late Nik Zainab. This means that exh P2 does not support the plaintiff's contention that exh P2 creates a trust instrument appointing the plaintiff as the trustee for the benefit of Nik Afrina.

[31] Thus, exh P2 also does not confer any locus standi on the plaintiff to bring this action as 'trustee' or 'attorney' of Nik Afrina.

The defendants' counterclaim

[32] The defendants' counterclaim alleges:

(1) that exh P1 and exh P2 were fraudulently obtained by the plaintiff; and

(2) that the power of attorney (exh D28) given to the first appellant/third defendant (Nik Rahimi) overrides exh P1 and exh P2.

[33] It is the defendants' case that the late Nik Zainab, some six months after the execution of exh P1 and exh P2, had directed a solicitor, one Ms San Yuen Ping (DW2), to prepare an irrevocable power of attorney (exh D28) appointing her daughter, Nik Rahimi (the first appellant/third defendant), to deal with the disputed property, and to nullify exh P1 and exh P2. Exhibit D28 was executed by the late Nik Zainab in the house of the first appellant/third defendant (Nik Rahimi) on 15 December 2006; and it is claimed that the contents of exh D28 was duly explained to the late Nik Zainab by the said Ms San Yuen Ping.

[34] The late Nik Zainab died some six months later.

[35] The plaintiff contends that, in the light of the state of health of the late Nik Zainab at the material time, exh D28 could not have been voluntarily made by the late Nik Zainab.

[36] The learned trial judge made the following finding:

Mengenai D28 (Dokumen 3), dari keterangan yang dikemukakan menunjukkan yang D28 dilaksanakan oleh Nik Zainab dalam keadaan yang beliau terlantar sakit. Defendan-defendan melalui tindakan mereka telah membawa seseorang yang munasabah, iaitu, SD2 untuk mahkamah mempercayai yang mereka tidak mempergunakan keadaan kesihatan Nik Zainab untuk laksanakan D28.

Selanjutnya boleh dibuat inferens oleh mahkamah dari fakta yang tidak dipertikaikan yang kesihatan Nik Zainab begitu lemah pada masa pelaksanaan dan sebelum pelaksanaan D28.

D28 menunjukkan yang defendan-defendan telah mengambil tindakan seolah-olah Nik Zainab yang secara sukarela melaksanakan D28. Setelah penelitian keterangan yang dikemukakan, Nik Zainab pada ketika itu berada dalam kesihatan yang sangat lemah dan terlantar di katil, saya dapati beliau tidak berada di dalam keadaan kesihatan dan mental yang stabil membolehkan beliau melaksanakan secara sukarela.

D28, saya dapati tidak membatalkan P1 dan P2. D28 dilaksanakan dalam keadaan Nik Zainab tidak berada di dalam mental yang boleh melaksanakan D28 secara sukarela. D28 dengan itu adalah tidak sah.

OUR FINDINGS ON THE COUNTERCLAIM

[37] In our judgment, based on the evidence, we agree with the finding of the learned trial judge that the defendants had failed to establish fraud in respect of the execution of exh P1 and exh P2 by the late Nik Zainab. However, in the light of the view that we have expressed above that exh P1 and exh P2 are not valid by reason of being a confusing and unclear documents and that (assuming the two instruments are valid) the plaintiff has no locus standi to bring this action, the issue of whether or not there was fraud has become somewhat academic.

[38] Based on the evidence, we also accept the finding of the learned trial judge that it had not been satisfactorily established that the late Nik Zainab was mentally fit to execute the power of attorney exh D28; and, therefore, the defendants had failed to establish that exh D28 is a valid power of attorney.

Ruling on the appeal

[39] Under the circumstances we allow the appeal, but only partially, in that we set aside the order of the High Court in allowing the plaintiff's claim and totally dismissing the defendants' counterclaim. Instead, on our part, we are only allowing prayer (d) of the defendants' counterclaim (a declaration that the disputed property be distributed in accordance with *faraid*); and nothing more. (Each party to bear own costs.)

(Appeal allowed in part ie the disputed property be distributed in accordance

with *faraid*, the High Court order is set aside, each party to bear own costs.)

Appeal allowed in part; order of High Court set aside.

Reported by Afiq Mohamad Noor